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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,950	03/29/2007	Thomas Nissl	047956/307840	7925
37305	7590	08/29/2008	EXAMINER	
ALSTON & BIRD LLP			MILLER, CHERYL L	
BANK OF AMERICA PLAZA				
101 SOUTH TRYON STREET			ART UNIT	PAPER NUMBER
SUITE 4000				3738
CHARLOTTE, NC 28280-4000				
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08/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/573,950	NISSL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	CHERYL MILLER	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 August 2008.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 and 4-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 and 4-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 11, 2008 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, and 4-13 have been considered but are moot in view of the new ground(s) of rejection.

The examiner has maintained the Burgermeister (US 2005/0004657 A1) rejection thus has responded to applicants corresponding arguments. The applicant has argued that Burgermeister's head ends are not extending from the proximal and distal ends of the stent (that the annular segments R do not make up the proximal and distal ends of the stent). The examiner disagrees. Figure 5 seemingly is showing the end of a stent as no connectors or extensions are extending to the left of the page off the annular segment R. As no connectors are shown extending off to the left of annular segment R, this segment R would seemingly make up one of the ends of stent, thus providing heads that extend from the ends. The stent has a repetitive structure with alternating annular segments (R) and connectors (250). Each annular segment (R) has enlarged head ends (peaks and valleys on longer struts). It is inherent that the end annular segments would also have enlarged head ends, as no annular segments are shown without head ends and there is not disclosure that discusses absence of head ends. Further, annular segments

would seem to make up the ends of the stent as the connectors (250) are to perform one function only-connecting two annular segments (R). Connectors (250) would not be on the ends of the stent, as they would not be connecting anything together, thus not serving their function. Further if connectors were on the ends of stents, the free ends of the connectors would potentially cause trauma to the patient during delivery and deployment. It is clear that the annular segments make up the ends of the stent, a feature common to all stents in the art. The applicant has also argued that Burgermeister's stent does not reduce traumatization of the vessel. The examiner disagrees. Nowhere in Burgermeister is it disclosed that trauma or damage to the vessel wall occurs. In fact, Burgermeister's head ends are rounded just as applicants head ends are rounded thus would seemingly provide the same reduced trauma effect as applicant's stent.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 4-14 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Mangiardi et al. (US 2004/0088040 A1). See figures 1 and 8.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Claims 1, 4-7, and 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Burgermeister (US 2005/0004657 A1, cited previously). See figures 4a and 5. Burgermeister discloses an expandable stent (200) comprising annular segments (R) formed by struts (210, 220) and transitional sections (peaks valleys), adjacent annular segments coupled by connectors (250), wherein every other transitional section of end annular segments has a widened head (peak or valley of b) that projects axially from the ends (fig.5; stent has repetitive structure, thus projects from all annular segments R, including end segments R) and has a convex front, convex edge, and concave throat (seen in fig.5), wherein the concave throats are configured to intermesh with adjacent transitional section in the initial compressed state (fig.5). Any strut or section of a strut (210, 220 or peak or valley) may serve as a deflection element, as any of the struts are capable of having a thread loop around the strut. No particular structure has been claimed for the deflection element, thus the struts alone may provide the function and thus read on the claim. Burgermeister has shown head ends spaced from one another in the initial state (see fig.5).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgermeister (US 2005/0004657 A1, cited previously) in view of Schaeffer (US 6,786,922 B2, cited previously).

Burgermeister discloses a stent substantially as claimed. Burgermeister discloses annular segments and connectors, however has shown the connectors offset instead of axially aligned. Schaeffer teaches in the same field of stents, the use of axially aligned connectors (fig.1, 4) as an alternative to offset connectors (fig.2, 6). Various stents configurations are known in the art, including a variety of differently oriented connectors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Burgermeister's stent having offset connectors, with Schaeffer's teaching of using aligned connectors as an alternate to offset connectors, in order to provide a different shaped stent. Such is a mere obvious design choice. Both aligned and offset connectors are very well known in the art and it is an obvious substitution to replace one with the other.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHERYL MILLER whose telephone number is (571)272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cheryl Miller/  
Examiner, Art Unit 3738

/Corrine M McDermott/  
Supervisory Patent Examiner, Art Unit 3738